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Attorneys for Defendants
 12 DIRECTTOU, LLC and ALLIANCE
 ENTERTAINMENT, LLC
 13

14 **IN THE UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

16 JONATHAN HOANG TO, JEFFRY HEISE,
 and JOSEPH MULL, individually and on
 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 DIRECTTOU, LLC and ALLIANCE
 20 ENTERTAINMENT, LLC,

21 Defendants.
 22

CASE NO.: 3:24-CV-06447-WHO

**DECLARATION OF TIM HINSLEY IN
 SUPPORT OF MOTION TO STAY
 AND COMPEL ARBITRATION**

*[Filed concurrently with Notice of Motion;
 Motion; Memorandum of Points and
 Authorities; Declaration; and Proposed
 Order]*

Hearing: April 16, 2025
 Time: 2:00 PM
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DECLARATION OF TIM HINSLEY

I, Tim Hinsley, declare as follows:

1. I am over the age of 18 years old. I am the General Manager of DirectToU, LLC (“DirectToU”). I have worked at DirectToU since January 2011. I make this declaration in support of DirectToU and Alliance Entertainment, LLC’s (“Alliance”) (collectively, “Defendants”) Motion to Stay and Compel Arbitration. If called to testify regarding the facts set forth in this declaration, I could and would testify competently thereto.

2. I make this declaration in Support of Defendants’ concurrently filed Motion to Stay and Compel Arbitration (“Motion”).

3. DirectToU and Alliance have the same parent company and are corporate affiliates.

4. DirectToU owns and operates the websites www.deepdiscount.com, www.ccvideo.com, and www.moviesunlimited.com (individually the “Website” or collectively the “Websites”) on which products are sold directly to customers.

5. A true and correct copy of the Terms of Use available on www.deepdiscount.com is attached hereto as Exhibit 1. The text of the Terms of Use has been the same from before May 4, 2021 through the present.

6. A true and correct copy of the Terms of Use available on www.ccvideo.com is attached hereto as Exhibit 2. The text of the Terms of Use has been the same from before May 4, 2021 through the present.

7. A true and correct copy of the Terms of Use available on www.moviesunlimited.com is attached hereto as Exhibit 3. The text of the Terms of Use has been the same from before May 4, 2021 through the present.

8. To purchase a product online, the Websites each require a customer to complete the same series of steps, which have been in place on each Website from May 4, 2021 through the present.

9. To make a purchase on any of the Websites, a customer first must put the items they want to purchase into their shopping cart, initiate the checkout process, and then input

1 shipping, billing, and payment information. After the customer has provided this information, a
2 final checkout screen appears summarizing the customer's shipping address, billing method, items
3 in cart, and order summary (including pricing). A true and correct copy of an example of this final
4 checkout screen which appears on each of the Websites is attached hereto as Exhibit 4, with
5 personal information redacted.

6 10. When a customer first lands on the final checkout screen exemplified in Exhibit 4,
7 the box immediately to the left of the words, "I acknowledge that I have read and agree to the
8 Terms of Use" is unchecked and the "PLACE ORDER" button is grayed out and inactive (i.e., the
9 "PLACE ORDER" button cannot be clicked by the customer). In order to submit the order on any
10 of the Websites, the customer must assent to the Terms of Use on the Website they are using by
11 taking affirmative action to click the checkbox to the left of the words, "I acknowledge that I have
12 read and agree to the Terms of Use" on the final checkout screen illustrated in Exhibit 4. The
13 "PLACE ORDER" button becomes active only when the checkbox is clicked and immediately
14 becomes inactive again during any time period that the checkbox is unclicked. In other words, it
15 is impossible for a customer to place an order on any of the Websites without affirmatively
16 checking the box indicating that the customer has read and agreed to the Terms of Use because the
17 "PLACE ORDER" button is active only when that checkbox is clicked.

18 11. On each of the Websites, the words "I acknowledge that I have read and agree to
19 the Terms of Use" on the final checkout screen exemplified in Exhibit 4 are in blue underlined text
20 which indicates the presence of a hyperlink so that a customer can open and review the Terms of
21 Use prior to deciding whether to consent. When a customer clicks on this hyperlink, they are
22 brought to the Terms of Use page that corresponds to the Website they are using, which contains
23 the full text of the applicable Terms of Use contained in Exhibits 1-3.

24 12. This process and information described in Paragraphs 8-11 above has been the same
25 on each of the Websites from May 4, 2021 through the present.

26 13. In addition, I have reviewed business records kept in the ordinary course of
27 DirectToU's business operations concerning customer purchases on the Websites. Each purchase
28

on each Website is recorded at or near the time of the purchase in DirectToU's record-keeping system. Tracking customer orders and returns is a regular practice and takes place for all customers of DirectToU's Websites.

14. In particular, I reviewed information in DirectToU's business records regarding Jeffry Heise, Joseph Mull, and Jonathan Hoang To's (collectively, "Plaintiffs") respective purchase history on the Websites. A true and correct copy of DirectToU's business records reflecting Plaintiffs' purchase history on the Websites is attached hereto as **Exhibit 5**. All information except for Plaintiffs' names, city and state (which correspond to the locations Plaintiffs allege in the Third Amended Complaint), and dates of purchases have been redacted for purposes of this Declaration. As reflected in **Exhibit 5**, Plaintiffs all made multiple purchases on one or more of the Websites between May 4, 2021 and the present.

15. Because the checkout process described in Paragraphs 8-11 above has been in place since May 4, 2021, and because Plaintiffs all made purchases on the Websites after that date, each Plaintiff would have assented to the Terms of Use by affirmatively checking the box next to the language "I acknowledge that I have read and agree to the Terms of Use," as described in Paragraphs 8-11 above. Without checking the box, Plaintiffs would not have been able to complete their purchases.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 10th day of March, 2025 at Sacramento, California.

By:

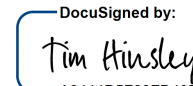
DocuSigned by:

A8444D5F23FD40F...
Tim Hinsley
General Manager

EXHIBIT 1

DeepDiscount

Terms of Use

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- (c) Submit, display, or transmit any User Content that exceeds DeepDiscount's capacity limits or for which you do not own or have the necessary and appropriate rights;
- (d) Submit, display, or transmit any spam, duplicative messages, unauthorized promotions or advertisements, surveys, contests, chain letters, or pyramid schemes;
- (e) Forge headers, create a false identity, or otherwise manipulate identifiers in order to deceive others or disguise the origin of any User Content transmitted to or via the site;
- (f) Use the site to threaten, defame, abuse, assault, stalk, harass or otherwise violate the rights of any other person or entity, including without limitation rights of privacy or publicity;
- (g) Publish, post, display, offer, or disseminate any profane, obscene, indecent, unlawful, terroristic, violent, or hateful User Content;
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- (b) attempt to access data or information not intended for you or log onto a server or account that you are not authorized to access;
- (c) access or attempt to access any system or servers on which the site is hosted or modify or alter the site in any way;
- (d) upload or otherwise transmit files that contain viruses, worms, Trojan horses, malicious code, spyware, adware, sniffers, corrupted files, or similar software or programs;

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- (f) post or upload User Content (as hereinafter defined) that disrupts the normal flow of dialogue with an excessive amount of User Content (flooding attack) to the site, or that otherwise negatively affects other users' ability to access or use the DeepDiscount Platform or any DeepDiscount web site; or
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- b) a description of the copyrighted work that you claim has been infringed;
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- d) your address, telephone number, and email address;
- e) a statement by you that you have a good faith belief that the alleged infringing material is not authorized by the copyright owner, its agent, or the law;
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You agree to defend, indemnify and hold DeepDiscount harmless from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from or related to: (i) your use of and access to the DeepDiscount Platform; (ii) your violation of any term of this Agreement, including without limitation your breach of any of the representations and warranties contained herein; (iii) your violation of any third-party right, including without limitation any right of privacy or intellectual property rights; (iv) your violation of any applicable law, rule or regulation; (v) any claim or damages that arise as a result of any of your User Content or any content that is submitted via your account; or (vi) any other party's access and use of any portion of the DeepDiscount Platform with your unique username, password or other appropriate security code. You agree that the provisions contained in this section will survive any termination or expiration of this Agreement and/or your account, or of discontinuation of all or any portion of the DeepDiscount Platform.

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Any claim, dispute or controversy between you and DeepDiscount that arises in whole or in part from all or any portion of your access or use of the DeepDiscount Platform or otherwise in connection with this Agreement, or the breach, termination, enforcement, interpretation of validity thereof, including the determination of the scope of applicability of this agreement to arbitrate (a "Dispute") shall be decided exclusively in small claims court or by binding arbitration as set forth in this section, and not by courts of general jurisdiction.

If a Dispute meets all requirements to be heard in small claims court, you may litigate the Dispute in small claims court in your county of residence or in Orange County, California.

Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. You agree that, by agreeing to this Agreement, the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision and that you and DeepDiscount are each waiving the right to a trial by jury. YOU AND DEEPDISCOUNT AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. YOU AGREE THAT THIS CLASS ARBITRATION WAIVER APPLIES TO YOU AND TO ANY CHILD OR OTHER PERSON ON WHOSE BEHALF YOU REGISTER WITH THE DEEPDISCOUNT PLATFORM.

If you elect to seek arbitration in connection with a Dispute, you must first send to DeepDiscount, by certified mail, a written notice of the claim ("Notice") to the DeepDiscount address set forth at the end of this Agreement. If DeepDiscount elects to

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seek arbitration in connection with a Dispute, it will send, by certified mail, a written Notice to the address used for your DeepDiscount account. A Notice, whether sent by you or by DeepDiscount, must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought. If DeepDiscount and you do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, you or DeepDiscount may file a claim in small claims court or commence an arbitration proceeding.

During the arbitration, the amount of any settlement offer made by DeepDiscount or you shall not be disclosed to the arbitrator. You may obtain a form to initiate arbitration at www.jamsadr.com. If you are required to pay a filing fee, after DeepDiscount receives notice that you have commenced arbitration, it will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than US\$10,000. The arbitration will be governed by the [JAMS Streamlined Arbitration Rules & Procedures](#) ("JAMS Rules") in effect at the time of the Dispute, as modified by this Agreement, and will be administered by JAMS, Inc. ("JAMS"). JAMS' Rules and Forms are available online at www.jamsadr.com, by calling JAMS at 1-800-352-5267 or by writing to DeepDiscount at the address set forth at the end of this Agreement. The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, including issues relating to the scope and enforceability of this arbitration provision. Unless DeepDiscount and you agree otherwise, any arbitration hearings will take place in the county (or parish) of your billing address. (If you reside outside of the United States, any arbitration hearings will take place in your country of residence at a location reasonably convenient to you, but will remain subject to the JAMS Rules including the JAMS Rules regarding the selection of an arbitrator). The arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. If the arbitrator issues you an award that is greater than the value of DeepDiscount's last written settlement offer made before an arbitrator was selected (or if DeepDiscount did not make a settlement offer before an arbitrator was selected), then DeepDiscount will pay you the amount of the award or US\$1,000, whichever is greater. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Except as expressly set forth herein, the payment of all filing, administration and arbitrator fees will be governed by the JAMS Rules.

EXHIBIT 2

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- (d) Submit, display, or transmit any spam, duplicative messages, unauthorized promotions or advertisements, surveys, contests, chain letters, or pyramid schemes;
- (e) Forge headers, create a false identity, or otherwise manipulate identifiers in order to deceive others or disguise the origin of any User Content transmitted to or via the site;

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- (f) Use the site to threaten, defame, abuse, assault, stalk, harass or otherwise violate the rights of any other person or entity, including without limitation rights of privacy or publicity;
- (g) Publish, post, display, offer, or disseminate any profane, obscene, indecent, unlawful, terroristic, violent, or hateful User Content;
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- (b) attempt to access data or information not intended for you or log onto a server or account that you are not authorized to access;
- (c) access or attempt to access any system or servers on which the site is hosted or modify or alter the site in any way;
- (d) upload or otherwise transmit files that contain viruses, worms, Trojan horses, malicious code, spyware, adware, sniffers, corrupted files, or similar software or programs;
- (e) restrict or prevent any other user from using the site and/or any products, services, or Content posted on or offered through the site;
- (f) post or upload User Content (as hereinafter defined) that disrupts the normal flow of dialogue with an excessive amount of User Content (flooding attack) to the site, or that otherwise negatively affects other users' ability to access or use the CCVideo Platform or any CCVideo web site; or
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Some states, provinces or territories do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

8. Indemnification

You agree to defend, indemnify and hold CCVideo harmless from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from or related to: (i) your use of and access to the CCVideo Platform; (ii) your violation of any term of this Agreement, including without limitation your breach of any of the representations and warranties contained herein; (iii) your violation of any third-party right, including without limitation any right of privacy or intellectual property rights; (iv) your violation of any applicable law, rule or regulation; (v) any claim or damages that arise as a result of any of your User Content or any content that is submitted via your account; or (vi) any other party's access and use of any portion of the CCVideo Platform with your unique username, password or other appropriate security code. You agree that the provisions contained in this section will survive any termination or expiration of this Agreement and/or your account, or of discontinuation of all or any portion of the CCVideo Platform.

9. Arbitration Agreement and Class Action/Arbitration Waiver

Any claim, dispute or controversy between you and CCVideo that arises in whole or in part from all or any portion of your access or use of the CCVideo Platform or otherwise in connection with this Agreement, or the breach, termination, enforcement, interpretation of validity thereof, including the determination of the scope of applicability of this agreement to arbitrate (a "Dispute") shall be decided exclusively in small claims court or by binding arbitration as set forth in this section, and not by courts of general jurisdiction.

If a Dispute meets all requirements to be heard in small claims court, you may litigate the Dispute in small claims court in your county of residence or in Orange County, California.

Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. You agree that, by agreeing to this Agreement, the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision and that you and CCVideo are each waiving the right to a trial by jury. YOU AND CCVideo AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. YOU AGREE THAT THIS CLASS ARBITRATION WAIVER APPLIES TO YOU AND TO ANY CHILD OR OTHER PERSON ON WHOSE BEHALF YOU REGISTER WITH THE CCVideo PLATFORM.

If you elect to seek arbitration in connection with a Dispute, you must first send to CCVideo, by certified mail, a written notice of the claim ("Notice") to the CCVideo address set forth at the end of this Agreement. If CCVideo elects to seek arbitration in connection with a Dispute, it will send, by certified mail, a written Notice to the address used for your CCVideo account. A Notice, whether sent by you or by

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CCVideo, must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought. If CCVideo and you do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, you or CCVideo may file a claim in small claims court or commence an arbitration proceeding.

>During the arbitration, the amount of any settlement offer made by CCVideo or you shall not be disclosed to the arbitrator. You may obtain a form to initiate arbitration at www.jamsadr.com. If you are required to pay a filing fee, after CCVideo receives notice that you have commenced arbitration, it will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than US\$10,000. The arbitration will be governed by the JAMS Streamlined Arbitration Rules & Procedures ("JAMS Rules") in effect at the time of the Dispute, as modified by this Agreement, and will be administered by JAMS, Inc. ("JAMS"). JAMS' Rules and Forms are available online at www.jamsadr.com, by calling JAMS at 1-800-352-5267 or by writing to CCVideo at the address set forth at the end of this Agreement. The arbitrator is bound by the terms of this Agreement.

All issues are for the arbitrator to decide, including issues relating to the scope and enforceability of this arbitration provision. Unless CCVideo and you agree otherwise, any arbitration hearings will take place in the county (or parish) of your billing address. (If you reside outside of the United States, any arbitration hearings will take place in your country of residence at a location reasonably convenient to you, but will remain subject to the JAMS Rules including the JAMS Rules regarding the selection of an arbitrator). The arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. If the arbitrator issues you an award that is greater than the value of CCVideo's last written settlement offer made before an arbitrator was selected (or if CCVideo did not make a settlement offer before an arbitrator was selected), then CCVideo will pay you the amount of the award or US\$1,000, whichever is greater. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Except as expressly set forth herein, the payment of all filing, administration and arbitrator fees will be governed by the JAMS Rules.

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EXHIBIT 3

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- d) your address, telephone number, and email address;
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During the arbitration, the amount of any settlement offer made by MoviesUnlimited or you shall not be disclosed to the arbitrator. You may obtain a form to initiate arbitration at www.jamsadr.com. If you are required to pay a filing fee, after MoviesUnlimited receives notice that you have commenced arbitration, it will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than US\$10,000. The arbitration will be governed by the <https://www.jamsadr.com/rules-streamlined-arbitration/> ("JAMS Rules") in effect at the time of the Dispute, as modified by this Agreement, and will be administered by JAMS, Inc. ("JAMS"). JAMS' Rules and Forms are available online at www.jamsadr.com,

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by calling JAMS at 1-800-352-5267 or by writing to MoviesUnlimited at the address set forth at the end of this Agreement. The arbitrator is bound by the terms of this Agreement.

All issues are for the arbitrator to decide, including issues relating to the scope and enforceability of this arbitration provision. Unless MoviesUnlimited and you agree otherwise, any arbitration hearings will take place in the county (or parish) of your billing address. (If you reside outside of the United States, any arbitration hearings will take place in your country of residence at a location reasonably convenient to you, but will remain subject to the JAMS Rules including the JAMS Rules regarding the selection of an arbitrator). The arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. If the arbitrator issues you an award that is greater than the value of MoviesUnlimited's last written settlement offer made before an arbitrator was selected (or if MoviesUnlimited did not make a settlement offer before an arbitrator was selected), then MoviesUnlimited will pay you the amount of the award or US\$1,000, whichever is greater. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Except as expressly set forth herein, the payment of all filing, administration and arbitrator fees will be governed by the JAMS Rules.

EXHIBIT 4


1. Shipping

2. Billing & Payment

3. Place Order



Shipping Address

Change




Billing & Payment


Change

 Ending in 
Visa

Items in cart

Change


Get it between Fri. Feb 21 - Mon. Feb 24 to 

 Mary Poppins (50th Anniversary)
786936836134
DVD
Qty: 1 | \$11.96 (ea)

Availability: In Stock

\$11.96

Order Summary

 1 Item(s) in cart

Subtotal

\$11.96

Standard Shipping

\$9.95

Sales Tax (10.25%)

\$2.25

ORDER TOTAL

\$24.16

☐ [I acknowledge that I have read and agree to the Terms of Use](#)

PLACE ORDER

EXHIBIT 5

	A	B	C	D	E	F	G	H
1	OrdNmbr	CustNmbr	CustName	BillName	BillAddr1	BillAddr2	BillCity	BillState
2			MU INTERNET	Joseph Mull			Arenzville	IL
3			MU INTERNET	Joseph Mull			Arenzville	IL
4			MU INTERNET	Joseph Mull			Arenzville	IL
5			MU INTERNET	Joseph Mull			Arenzville	IL
6			CCV INTERNET	Jeffry D Heise			Coldwater	MI
7			CCV INTERNET	Jeffry D Heise			Coldwater	MI
8			CCV INTERNET	Jeffry D Heise			Coldwater	MI
9			CCV INTERNET	Jeffry D Heise			Coldwater	MI
10			CCV INTERNET	Jeffry D Heise			Coldwater	MI
11			CCV INTERNET	Jeffry D Heise			Coldwater	MI
12			CCV INTERNET	Jeffry D Heise			Coldwater	MI
13			CCV INTERNET	Jeffry D Heise			Coldwater	MI
14			DEEPPDISCOUNT	JEFFRY HEISE			Coldwater	MI
15			DEEPPDISCOUNT	Jonathan To			Los Angeles	CA
16			DEEPPDISCOUNT	Jonathan To			Los Angeles	CA
17			DEEPPDISCOUNT	Jonathan To			Los Angeles	CA
18			DEEPPDISCOUNT	Jonathan To			Los Angeles	CA

	I	J	K	L	M	N	O	P
1	BillZip	BillCountry	ShipName	ShipAddr1	ShipAddr2	ShipCity	ShipState	ShipZip
2			Joe Mull			ARENZVILLE	IL	
3			Joe Mull			ARENZVILLE	IL	
4			Joseph Mull			ARENZVILLE	IL	
5			Joe Mull			ARENZVILLE	IL	
6			JEFFRY HEISE			COLDWATER	MI	
7			Jeffry Heise			Coldwater	MI	
8			Jeffry Heise			COLDWATER	MI	
9			Jeffry Heise			Coldwater	MI	
10			Jeffry Heise			Coldwater	MI	
11			Jeffry Heise			Coldwater	MI	
12			Jeffry Heise			Coldwater	MI	
13			Jeffry Heise			Coldwater	MI	
14			JEFFRY HEISE			Coldwater	MI	
15			Jonathan To			Los Angeles	CA	
16			Jonathan To			Los Angeles	CA	
17			Jonatahn To			Los Angeles	CA	
18			Jonathan To			Los Angeles	CA	

	Q	R	S	T	U
1	ShipCountry	EmailAddr	OrderDate	SalesOrderID	CntlNumb
2			2023-08-14 00:00:00.000		
3			2023-09-05 00:00:00.000		
4			2024-05-15 00:00:00.000		
5			2024-09-03 00:00:00.000		
6			2021-10-25 00:00:00.000		
7			2021-11-02 00:00:00.000		
8			2021-12-05 00:00:00.000		
9			2021-11-08 00:00:00.000		
10			2022-02-21 00:00:00.000		
11			2022-03-06 00:00:00.000		
12			2022-04-25 00:00:00.000		
13			2023-04-04 00:00:00.000		
14			2023-07-23 00:00:00.000		
15			2021-12-15 00:00:00.000		
16			2021-12-28 00:00:00.000		
17			2022-02-21 00:00:00.000		
18			2022-11-01 00:00:00.000		